IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1043 OF 1991

1. Lala Lajpatrai Institute)
   a Society registered under the)
   provisions of the Societies)
   Registration Act, having its office)
   at Lala Lajpatrai Marg, Mahalaxmi,)
   Bombay 400 034)

2. M.G.Shirhatti, Principal,)
   Lala Lajpatrai College of Commerce)
   and Economics, having its office)
   at Lala Lajpatrai Marg, Mahalaxmi)
   Mumbai 400 034.)..Petitioners

Versus

1. D.T.Godbole,
   residing at S.K.Raigule, Lokmanya)
   Nagar, Pada No.3, Thane-6.)

2. Presiding Officer,)

Schools Tribunal,Bombay.)..Respondents

Mr. Birendra Saraf with Mr V.K. Shiradkar and Hemang Parekh i/by Shiradkar & Co. for the petitioners

Mr.Ashok N. Kotangale with Mr. Arun D. Nagarjun i/b Kotangale & Co. for the respondent no.1

CORAM : P.V.KAKADE, J.

DATE : 23RD DEC., 2005

P.C.:

1. The petitioners have filed this petition under Article 227 of the Constitution of India challenging the order passed by the School Tribunal, Mumbai, allowing the appeal of the respondent and setting aside the termination notice dated 4.4.1989 issued by the present petitioner-Management. The Management was also directed to reinstate the present respondent to his original post and pay him differences of emoluments, including pay and allowances from the date of his termination in the present post.

2. The petitioner is the Society registered under the provisions of the Societies Registration Act and was founded with the object of establishing, conducting, controlling and managing educational institutions. The petitioner no.2 is the Principal of Lala Lajpatrai College of Commerce and Economics founded by petitioner no.1. The 1st respondent is a Probationary Teacher, whose services have been terminated by the petitioners. The present respondent no.1 was appointed as Lecturer in the Junior College with effect from 22.6.1987. On 26.4.1988 a letter addressed to the Respondent no.1 was sent informing him about his unsatisfactory performance, during the year 1987-1988 and giving one more opportunity to improve his performance. There was Assessment Report of Professor (Mrs.) S.K.Garg on 27.9.1988 and further there was Assessment Report by the Principal of the College dated 17.1.1989. Assessment Report of Professor-in-charge and Superior Junior College Mr. Suresh Kumar was also dated 17.1.1989 and there was also Assessment Report of Prof. Ambekar dated 17.1.1989.

3. The meeting was held of the School Committee on 27.2.1989 wherein unanimous decision was taken to discontinue the services of the respondent no.1.

Thereafter meeting of the Governing Board was held wherein the said decision of the School Committee was confirmed on 27.2.1989 and accordingly on 4.4.1989 letter was addressed to Respondent no.1 informing him that his services should be terminated with effect from 19.6.1989 which was advance notice. On 11.4.1989 an Advertisement for the post of Lecturer in Commerce faculty in place of the respondent no.1 was given. The respondent no.1 also applied for the said post, but was not selected and therefore, he moved the School Tribunal against the order of termination and filed appeal being Appeal No.GEN.156/BOM-68 of 1989. After hearing both the parties and on the basis of available evidence the Tribunal was of the view that the act of the petitioner-management was not in accordance with the relevant law and termination order was illegal and hence appeal was allowed setting aside the termination notice with direction to reinstate the respondent no.1. Hence the present petition.

4. On 25.4.1991 the Petitioner-College filed Writ Petition No.1043 of 1991 and by an order dated 25.4.1991 the Division Bench of this Court passed an interim order to appoint the respondent no.1 in the employment and

assess his performance and it was directed that if he was found inadequate, then the opportunity was given to apply to the court to vacate the said ad-interim order. On the basis of the said order dated 25.4.1991 the petitioner appointed Respondent no.1, but his performance was found inadequate and in view of the same as per the liberty given to the petitioner they took out an application by way of Notice of Motion No.250 of 1992. The said notice of motion was heard and finally disposed of by order dated 30.6.1992 by Division Bench and by the said order this court found that there is considerable force in the submissions made by the petitioner about the performance of respondent no.1 and accordingly services of the respondent no.1 were discontinued.

5. On this background the petition is finally heard. At the outset it must be noted that the affidavit filed by Mr.D.C.Chaudhary dated 17.11.2005 which was brought to my notice wherein it is stated that the respondent no.1 is gainfully employed in Shivner Junior College of Commerce, Sakinaka, Powai at Andheri and Sahakar Night Junior College of Arts and Commerce, N.M.Joshi Marg, Lower Parel, Mumbai since 13th June 1997 and 19th June 1991 respectively.

6. The learned counsel for the petitioner brought to my notice the provision of Rule 15 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981, which concerned with writing of confidential reports. Sub-rule 6 of Rule 15 stipulates that performance of an employee appointed on probation shall be objectively assessed by the Head during the period of his probation and a record of assessment shall be maintained. On this basis the learned counsel for the petitioner has brought to my notice the record which was put forth before the tribunal, which according to me, was sufficient to show that the respondent no.1's performance was not upto the remark and therefore the Principal as well as the head of the concerned department were within their rights to write and forward their assessment report on which basis the School Tribunal and finally the governing body has acted in issuing notice of termination. The learned counsel for the petitioner also put reliance on the ruling of this court in the case of Savitribai Fule Shikshan Prasarak Mandal, Wardha and anr Vs. Dhananjay Deoraoji Diwate and ors. reported in 2004 (3) Mh.L.J. 18 wherein it was held that on a conjoint reading of Section 5(3) of the Maharashtra Employees of

Private Schools (Conditions of Service) Regulations Act, 1977 and Rule 15(6) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 it can be inferred that adverse remarks need not be communicated to a probationer in order to grant him opportunity to improve upon the same or agitate the same. All that is provided is the assessment of probationer's work by the Head and decision of the Management whether to continue his services or not. If the Management is of the opinion that during the period of probation, the services of the probationer were not satisfactory, it can very well terminate the services of such employee before the probation period comes to an end.

. This ratio laid down by this court is sufficient answer to the submission advanced on behalf of the respondent no.1 to the effect that adverse reports were not brought to the notice of the respondent no.1, and therefore, the notice of termination was bad in law.

7. In my considered view, no fault could be found with the action taken by the management and the tribunal appears to be clearly fallen in error in interpreting the relevant provision of law while allowing the appeal.

8. In view of this position, I am of the view that the order of the tribunal is bad in law and therefore, is required to be set aside. Needless to mention that the respondent no.1 appears to be gainfully employed since after his termination, especially when the fact to that effect is not rebutted by the respondent no.1.

9. Be as it may, the fact remains, that the petition deserves to be allowed. The rule is made absolute. The Petition is allowed in terms of prayer clause (c) and stands disposed of with no order as to costs.